

### **REMARKS**

This responds to the Office Action dated February 20, 2007.

Claims 1, 32, 33, 34 and 37 are amended, and no claims are cancelled or added in this response; as a result, claims 1 and 3-39 are pending in this application.

Support for the amendments is found generally within the specification. An example of support for claim 1 is found on pg. 8 lines 19-22 and pg. 13 lines 9-12. An example of support for the amendment to claim 33 is found on pg. 6 line 31 to pg. 7 line 1. An example of support for the amendment to claim 34 is found on pg. 11 line 27 to pg. 12 line 9. An example of support of the amendment to claim 37 is found on pg. 8 lines 13-25. The amendment to dependent claim 32 is to correct the reference to base claim 25.

### **§103 Rejection of the Claims**

1. Claims 1, 3-5, 13-18, 23-28 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. (U.S. 2002/0049480, “Lebel”) in view of Webb et al. (U.S. Patent No. 6,699,187, “Webb”). Applicant respectfully traverses the rejection. The Office Action fails to establish a proper *prima facie* case of obviousness because the proposed combination of Lebel and Webb does not teach or suggest all elements presently recited or incorporated into the claims.

*Regarding claims 1, 3-5, and 13-14:*

Applicant cannot in the proposed combination of Lebel and Webb any teaching or suggestion of, among other things,

analyzing the transport control information of the header data of each received packet to determine a position sequence of data from the packet in relation to data from other packets being sent when the position sequence is different from a receive sequence,

as presently recited in claim 1 and incorporated into claims 1, 3-5, and 13-14.

The Office Action concedes that Lebel does not expressly disclose analyzing the transport control information of the header data, but states that data in the Webb system can be determined to be of a specific [display] position within a specific packet when transmitted within

data from other packets being reconstructed.<sup>1</sup> However, Webb contains no disclosure of analyzing transport control information of the header ... to determine a position sequence of data from the packet in relation to data from other packets being sent when the position sequence is different from a receive sequence.

Instead, Webb relates to transfer of display screen data where only the changed screen data is transferred to the remote site to update the screen on the data processing system.<sup>2</sup> Because Webb refers to updating the screen in real-time,<sup>3</sup> the changed screen data must be sent sequentially. Therefore, Webb cannot determine a position sequence when the position sequence is different from a receive sequence.

*Regarding claims 15-18, and 23-24:*

Applicant cannot in the proposed combination of Lebel and Webb any teaching or suggestion of,

an implantable pulse generator device ... comprising ... at least one processing device configured to ... allow the data to be reconstructed from the packets for use by the at least one application program, the reconstruction including analyzing the transport control information of the header data of each received packet to determine the position of data from the packet within the data from other packets being reconstructed,

as recited in claim 15 and incorporated into claims 15-18 and 23-24, or

an implantable pulse generator device, comprising ... means for adding transport control information to outgoing data packets and for extracting transport control information from incoming data packets, the transport control information permitting determining the position of data from the packet within the data from other packets being reconstructed,

as recited in claim 25 and incorporated into claims 26-28 and 32.

The Office Action concedes that Lebel does not expressly disclose analyzing the transport control information of the header data, but states that data in the Webb system can be determined to be of a specific [display] position within a specific packet when transmitted within

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<sup>1</sup> Office Action, carryover sentence pg.3 to pg. 4.

<sup>2</sup> Webb, col. 10 lines 10-13.

<sup>3</sup> Webb, col. 9 lines 57-60.

data from other packets being reconstructed.<sup>4</sup> However, Webb refers to a system for allowing medical data obtained at a local site to be transferred to a data processing system at a remote site to allow a remotely-located expert to participate in a procedure at the local site.<sup>5</sup> The cited portions of Webb are related to particulars associated with transfer of [display] screen data,<sup>6</sup> where only the changed screen data is transferred to the remote site to update the screen on the data processing system.<sup>7</sup> Therefore, at least because there is no reason to transfer changed screen data to an implantable medical device, the proposed combination of Lebel and Webb does not teach or suggest an implantable pulse generator device analyzing the transport control information of the header data of each received packet.

Further, a showing of proper motivation to make the proposed combination of Lebel and Webb is lacking. There are three possible sources of motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.<sup>8</sup>

Lebel refers to RF communication between an implantable device and an external device<sup>9</sup> and to minimizing power consumption of the implantable medical device, such as by keeping a device listening period small,<sup>10</sup> an automatic off feature,<sup>11</sup> and a receiver remaining in a powered down state most of the time.<sup>12</sup> Webb refers to a system for allowing medical data obtained at a local site to be transferred to a data processing system at a remote site to allow a remotely-located expert to participate in a procedure at the local site,<sup>13</sup> and states that the medical data may include a display window on a programmer screen.<sup>14</sup> Webb also refers to a standard seven-layer communication stack adapted with a special application layer 62a to handle the data.<sup>15</sup> However, Webb does not disclose using the adapted off-the-shelf communication stack to transfer data

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<sup>4</sup> Office Action, carryover sentence pg.3 to pg. 4.

<sup>5</sup> Webb, Abstract.

<sup>6</sup> Webb, col. 9 lines 14-15.

<sup>7</sup> Webb, col. 10 lines 10-13.

<sup>8</sup> M.P.E.P. § 2143.01 citing *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998).

<sup>9</sup> Lebel, ¶ 0298.

<sup>10</sup> Lebel, ¶ 0131.

<sup>11</sup> Lebel, ¶ 0175.

<sup>12</sup> Lebel, ¶ 0312.

<sup>13</sup> Webb, Abstract.

<sup>14</sup> Webb, col. 9 lines 16-18.

<sup>15</sup> Webb, col. 7 line 63 to col. 8 line 5.

from an implantable medical device.<sup>16</sup> Applicant submits that one of ordinary skill in the art would not have reasonably looked to Webb to transfer data from an implantable device using the adapted off-the-shelf communication stack because of the desire to minimize power consumption of the implantable medical device as taught by Lebel.

Applicant respectfully requests reconsideration and allowance of claims 1, 3-5, 13-18, 23-28 and 32.

2. Claims 6-12, 19-22 and 29-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. (U.S. 2002/0049480) in view of Webb et al. (U.S. Patent No. 6,699,187) as applied to claims 1, 3-5, 13-18, 23-28 and 32 above, and further in view of Lee (U.S. 2001/0031997). Applicant respectfully traverses the rejection.

Claims 6-12 ultimately depend on base claim 1, claims 19-22 ultimately depend on base claim 15, and claims 29-31 ultimately depend on base claim 25. As set forth above, Applicant believes the base claims to be allowable at least for the reason that the proposed combination of Lebel and Webb does not teach or suggest all of the elements presently recited in the base claims. Lee does not teach or suggest the missing elements.

Additionally, the Office states that Lee teaches that the interface medical device (116) could be placed outside the patient, which Examiner interprets to also mean that that interface device could alternatively be placed inside the patient.<sup>17</sup> However, Lee states that a medical instrument configured to implement the present invention [of Lee] will have the ability to establish and maintain a connection, for example, via telephone line or data network to the central data network.<sup>18</sup> Lebel refers to minimizing power consumption of the implantable medical device, such as by keeping a device listening period small.<sup>19</sup> Thus, one of ordinary skill in the art, upon reading Lebel and Lee, would not be led to place the interface medical device (116) of Lee within a patient.

Applicant respectfully requests reconsideration and allowance of claims 6-12, 19-22 and 29-31.

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<sup>16</sup> Webb, FIG. 1.

<sup>17</sup> Office Action, pg. 5.

<sup>18</sup> Lee, ¶ 0022.

<sup>19</sup> Lebel, ¶ 0131.

3. Claims 33-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. (U.S. 2002/0049480) in view of Webb et al. (U.S. Patent No. 6,699,187) as applied to claims 1, 3-5, 13-18, 23-28 and 32 above, and further in view of Nappholz et al. (U.S. Patent No. 5,720,770, “Nappholz”). Applicant respectfully traverses the rejection.

*Regarding claims 33-36:*

Applicant cannot find in the proposed combination of Lebel, Webb and Nappholz any teaching or suggestion of, among other things,

transferring a first data packet with first transport control header information from the data network to the repeater over the first transport layer connection; and transferring the first data packet with second transport control header information from the repeater to the implantable pulse generator over the second transport layer connection, wherein the transport control header information includes information as to how application data may be reconstructed from the data packets,

as presently recited in claim 33 and incorporated into claims 35 and 36.

The Office Action states that it is inherent that in the system as taught by Nappholz that the system is capable of sending data with the first transport control header information from the data network to the repeater and further sending the data with second transport control header information from the repeater to the implantable pulse generator.<sup>20</sup>

Applicant respectfully submits that the Office Action has not established a proper *prima facie* case of inherency because the Office Action has not provided the required basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of Nappholz.<sup>21</sup> Applicant respectfully submits that transferring the first data packet with second transport control header information from the repeater to the implantable pulse generator over the second transport layer connection does not necessarily flow from Nappholz, because Nappholz does not disclose communicating with an implantable device using a protocol that uses transport control information.

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<sup>20</sup> Office Action, pg. 7.

<sup>21</sup> M.P.E.P. § 2112, citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

*Regarding claims 37-39:*

Applicant cannot find in the proposed combination of Lebel, Webb and Nappholz any teaching or suggestion of

a first transport layer connection ... and a different second transport layer connection ... such that data packets traverse both the first transport layer connection and the second transport layer connection when passing between the data network and the implantable pulse generator, wherein a transport layer connection uses a transport layer protocol,

as recited in claim 37 and incorporated into claims 38 and 39.

The Office Action takes the position that the elements of claim 37 are inherent in Nappholz.<sup>22</sup> Applicant respectfully submits that the Office Action has not established a proper *prima facie* case of inherency because the Office Action has not provided a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of Nappholz.

Applicant respectfully submits that establishing a second transport layer connection between the repeater and the implantable pulse generator such that data packets traverse both the first transport layer connection and the second transport layer connection when passing between the data network and the implantable pulse generator does not necessarily flow from Nappholz because Nappholz does not disclose communicating with an implantable device using a transport layer protocol.

In sum, at least for the reason that the Office Action has not established a proper *prima facie* case of inherency, Applicant respectfully requests reconsideration and allowance of claims 33-36.

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<sup>22</sup> Office Action, pg. 7.

### **Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date June 14, 2007

By 

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of June 2007.

  
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